

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

CASE NO. 24-80126-CIV-CANNON

**SHOW PLUS PROMOTIONS, LLC.,
*et al,***

Plaintiffs,

v.

**VALLEY NATIONAL BANCORP. d/b/a
AGILR PREMIUM FINANCE, and BOB
PRZESPOLEWSKI**

Defendants.

**ORDER ACCEPTING MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION,
GRANTING IN PART AND DENYING IN PART DEFENDANTS’ MOTION TO
DISMISS, AND REQUIRING REPLEADING**

THIS CAUSE comes before the Court upon Defendants’ Motion to Dismiss Plaintiffs’ First Amended Complaint (the “Motion to Dismiss”) [ECF No. 14]. The Motion was referred to Magistrate Judge Ryon M. McCabe for a report and recommendation [ECF No. 15]. On May 13, 2024, Judge McCabe issued a report recommending that Defendants’ Motion be granted in part and denied in part (the “Report”) [ECF No. 18]. Plaintiffs filed Objections to the Report [ECF No. 19]. Defendants filed a Response to Plaintiffs’ Objections [ECF No. 20]. The Court has reviewed the Report [ECF No. 18], Plaintiff’s Objections [ECF No. 19], Defendants’ Response to Plaintiffs’ Objections [ECF No. 20] and the full record. For the reasons set forth below, the Report [ECF No. 18] is **ACCEPTED**; the Motion to Dismiss [ECF No. 14] is **GRANTED IN PART AND DENIED IN PART**; and Plaintiffs are permitted **one final opportunity** to amend consistent with this Order.

To challenge the findings and recommendations of a magistrate judge, a party must file specific written objections identifying the portions of the proposed findings and recommendation to which objection is made. *See* Fed. R. Civ. P. 72(b)(3); *Heath v. Jones*, 863 F.2d 815, 822 (11th Cir. 1989); *Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006). A district court reviews de novo those portions of the report to which objection is made and may accept, reject, or modify in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1). To the extent a party fails to object to parts of the magistrate judge's report, the Court may accept the recommendation so long as there is no clear error on the face of the record. *Macort*, 208 F. App'x at 784. Legal conclusions are reviewed de novo, even in the absence of an objection. *See LeCroy v. McNeil*, 397 F. App'x 554, 556 (11th Cir. 2010); *Cooper-Houston v. S. Ry. Co.*, 37 F.3d 603, 604 (11th Cir. 1994).

Following review, the Court finds no clear error on the face of the record and no errors of law. Accordingly, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The Report and Recommendation [ECF No. 18] is **ACCEPTED**.
2. Defendants' Motion to Dismiss Plaintiffs' Amended Complaint [ECF No. 14] is **GRANTED IN PART AND DENIED IN PART**. Count I (professional negligence), Count III (breach of the implied covenant of good faith as the 4 Beauty PFA), and Count IV (equitable accounting) are dismissed without prejudice. Count II (breach of the implied covenant of good faith as to the Travel Plus PFA), Count V (defamation per se) and Count VI (defamation per quod) survive dismissal.
3. **Plaintiffs shall have one final opportunity to file an amended pleading in this case, but any such amended pleading must be filed no later than September**


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13, 2024. The forthcoming Second Amended Complaint, once filed, shall be the sole, operative pleading considered in this case and must stand on its own, without reference to any previous pleading.

4. **Moreover, Plaintiffs are advised that Plaintiffs Show Plus Promotions, LLC; Travel Plus Promotions, LLC; VenturePlus Promotions, LLC; CaptiveOne Advisors, LLC; and CaptiveOne Services LLC, are limited liability companies that must be represented by counsel and cannot proceed pro se. *See Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381. Any amended pleading that is filed on behalf of these entities will be stricken without further notice if it is not signed by authorized counsel representing such parties.**

5. Order on Plaintiffs' Motion to Withdraw as Counsel [ECF No. 23] to follow.

DONE AND ORDERED in Chambers at Fort Pierce, Florida, this 13th day of August 2024.


AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

cc: counsel of record